

## Joint Legislative Oversight Committee on Unemployment Insurance

October 5, 2016

Room 544 Legislative Office Building

The Joint Legislative Oversight Committee on Unemployment Insurance (UI) met on Wednesday, October 5th at 9:30 AM. The meeting was held in Room 544 of the Legislative Office Building in Raleigh. Senator Bob Rucho presided. All documents and presentations are available on the Committee's website (<http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=232>).

Members present were: Senator Bob Rucho, Chair, Representative Julia Howard, Chair, Representative Harry Warren Vice- Chair, Senator John Alexander, Senator Ben Clark, and Senator Andy Wells. Rodney Bizzell and Greg Roney, staff. Billy Fritscher and Cody Huneycutt, committee Clerks.

### I. Call to order and introductory remarks

Senator Rucho called the meeting to order at 9:34 AM and welcomed members, staff, and visitors in attendance. Senator Rucho introduced the Sergeants-At-Arms, Reggie Sills, Marvin Lee, Terry McCaw, Hal Roach, and Sham Patel. Representative Howard offered no further opening remarks.

### II. Adoption of the Minutes from the April 6, 2016 Meeting

Senator Rucho moved that the minutes from the April 6, 2016, meeting be adopted. The Chair recognized Representative Howard, who motioned to approve the minutes. The motion carried unanimously.

### III. Division of Employment Security (DES): Overview of Division's Mission, Work, and Progress

Senator Rucho introduced Ted Brinn, Assistant Secretary, Division of Employment Security, Department of Commerce, to give an update on the current state of DES. Asst. Sec. Brinn's Report is available on the committee website ([http://www.ncleg.net/documents/sites/committees/BCCI-6596/2015-16%20Session/Meeting%20Documents/10-5-16/Oversight10516\(1\).pdf](http://www.ncleg.net/documents/sites/committees/BCCI-6596/2015-16%20Session/Meeting%20Documents/10-5-16/Oversight10516(1).pdf))

Following Asst. Sec. Brinn's presentation, Senator Rucho opened the floor to questions.

Senator Alexander

- Asked if the Southeast Consortium Unemployment Insurance Benefits Initiative (SCUBI) could share information of individuals caught filing fraudulent claims in South Carolina or Georgia?

Mr. Brinn stated that North Carolina uses the Government Data Analytics Center (GDAC) as its benefits integrity tool, whereas South Carolina and Georgia use a company called On Point Technology and The Benefit Audit, Reporting, and Tracking System (BARTS). GDAC interacts and shares information with over 180 federal and state agencies which is very helpful to DES in preventing individuals from committing fraudulent claims.

Representative Warren

- Asked when North Carolina goes live with SCUBI, in May, will it interface with one of the other two states or is it a separate system that North Carolina will be the first to get on? Mr. Brinn stated that there will be a sequenced startup schedule with South Carolina going first in February. If South Carolina has no issues, North Carolina will launch 4 to 6 weeks later then followed by Georgia. All three states will launch the same program and application but will use their own individual interfaces.

- Representative Warren followed up, asking since we are not interfacing computer systems among the three states, will it be through a centralized federal system? Mr. Brinn answered that they will interface through the SCUBI application and system.

## Senator Rucho

- Asked will SCUBI improve the efficiency of the operation? Mr. Brinn responded that it will convert a lot of paper processes to automation, plus it will allow work items to be moved from one area to another area in an automated fashion, and it will also give many automated alerts that DES doesn't get today.
- Senator Rucho followed up, asking will this allow employers and beneficiaries to have an electronic type filing system that will improve the delivery of information in a more expedited manner? Mr. Brinn responded that was correct, and an example of that would be the division's current initial claims notification (Form 500AB) which is mailed to employers and has to be either mailed or faxed back. In the new SCUBI system, this information will be available to complete over the internet and will be better for efficiency and help with timeliness issues.
- Senator Rucho commented that if available electronically, this should reduce a day or two of mailing, and the timing issue may no longer be the problem that it currently is.
- Senator Rucho requested with the approval of Representative Howard that a presentation of the SCUBI program be placed on the agenda for the next UI meeting, in November.
- Senator Rucho introduced and welcomed Senator Wells as the newest member of the UI committee.

## Senator Wells

- Commented that a financial incentive plan should be created to help expedite the return of information from the private sector, and in turn, it could help alleviate expenses incurred from delays. Mr. Brinn responded that it is a wonderful concept and that DES would love to explore it more if the US Department of Labor (USDOL) will allow them to do so.

## IV. Unemployment Insurance Program

Senator Rucho introduced Lockhart Taylor, Director of Governmental Relations, Division of Employment Security, Department of Commerce, to provide details on Mr. Brinn's update of the Unemployment Insurance Program, the presentation is available on the committee website [http://www.ncleg.net/documents/sites/committees/BCCI-6596/2015-16%20Session/Meeting%20Documents/10-5-16/Oversight10516\(1\).pdf](http://www.ncleg.net/documents/sites/committees/BCCI-6596/2015-16%20Session/Meeting%20Documents/10-5-16/Oversight10516(1).pdf)

Following Mr. Taylor's presentation, Senator Rucho opened the floor to questions.

Representative Warren

· Asked what amount does the Trust Fund surplus have to go below before the surcharge kicks in? Mr. Taylor answered that amount is set at \$1 Billion.

Senator Rucho

· Asked is using the average high-cost multiple (AHCM) balance what is required of the Trust Fund in regard to the kind of reserve we should have, and if so, what benefit does it give the Trust Fund and DES in operating the system? Mr. Taylor answered that in 2007 there were 33 states with insolvent UI Trust Funds. It has been the goal of the USDOL to suggest the use of the AHCM balance in order to prepare for any future economic downturn. Using the three highest payout periods is the most sensible way to ensure a solvent fund. It is a benefit to employers to know that we shouldn't get into a situation where they would be hit with unnecessary taxes and where we would be insolvent and have to borrow in the future.

· Senator Rucho followed up, asking are you treated differently by the USDOL, if you are at that level? Mr. Taylor responded yes, but there is also one requirement of hitting the 1% AHCM. During the 2002 recession, North Carolina got into a borrowing status. North Carolina utilized a federal provision that allows states to borrow for up to three consecutive quarters within a year, interest-free, as long as the balance is repaid at the end of the quarter and then proceed an entire quarter without borrowing. The federal government, in 2010, passed a provision that said states that didn't achieve the 1% AHCM would not be allowed to utilize the interest-free borrowing practice.

· Senator Rucho stated that by achieving the level of reserves we have set aside, it gives the state more flexibility. Mr. Taylor agreed.

· Senator Rucho followed up, stating that there is a lot of misunderstanding about the fact that employers are the ones that pay the insurance and that it does not come from the employees' direct contribution. Senator Rucho asked, is that correct? Mr. Taylor responded yes sir, and in fact, it is illegal for an employer to withhold the cost of the unemployment benefits against their employee.

· Senator Rucho commented that it is the employer who has paid the \$2.3 Billion in expenses and reversed what was almost a \$2.7 Billion debt to the federal government. The employers have also paid it to the point where now the Trust Fund is presently at \$2.1 Billion. Hopefully, at some point, we will

achieve our AHCM. Mr. Brinn responded that is exactly right. The employers also pay the federal unemployment tax in addition to the quarterly state unemployment tax.

The unemployment system dynamic is twofold. Monies go to the state every quarter from employers to get the trust fund to where it needs to be, and the federal unemployment tax that goes to the Feds is sent back to the state to run its programs.

- Senator Rucho stated that it is important for the committee members and everyone in the audience to understand that when this system gets below \$1 Billion, a red flag goes up. There is a new charge so that the employers are contributing to make sure there is a continuous source to pay the benefits as need be. This system is an employer-based system, and they are there to pay the cost, backstop the system and to make sure that this benefit is available for North Carolinians that need this help.

Senator Wells

- Stated that it appears we have effectively gone through \$2.4 Billion in two years.
- Senator Wells asked is it conceivable that a \$2.4 Billion balance is not enough?

Mr. Taylor responded yes, but referred to Mr. Brinn for an explanation. Mr. Brinn explained that it is conceivable they will never know an amount that will positively be enough for every possible scenario. DES continues to collect tax money from employers, for that particular year, adding to the \$2.3 to \$2.4 Billion which helps insulate against having to borrow. The combination of those two dynamics is our best chance for weathering the storms we've seen in the past 20 years.

Representative Howard

- Followed up on Senator Well's question, asking how much money is enough or is it just an estimated guess? Mr. Brinn responded that is exactly right. Based on history the number of employers should stay fairly constant. At any one time, DES expects to collect about \$1 Billion of tax revenue plus the baseline of \$2.3 to \$2.4 Billion which gives them roughly \$3.3 Billion available to help with risk. The state could have \$5 Billion in the trust fund and feel very safe, but there will be conversations to determine how much is enough and decisions will be made based on that.

Representative Warren

- Asked when using the three highest years of payouts to figure the AHCM, is there a consideration for growth in the workforce, and if so, is there a percentage factored in for allowance of growth or is it negligible and not worth calculating? Mr. Taylor explained that it gets compared to total wages within

the state when calculated. The growth and wages should compensate directly towards the growth in the labor market.

Senator Alexander

- Asked is the trust fund money physically with the State Treasurer? Mr. Taylor answered that the money sits in the US Treasury, in Washington, D.C. Collected taxes are sent up to the trust fund and benefits are drawn down on a daily basis.

- Followed up, asking is there any interest earned on the money we receive, and if so, does it go back into the trust fund? Mr. Taylor responded absolutely, yes sir.

Senator Rucho

- Asked what is the normal rate charged to an employer per employee? Mr. Brinn responded that their system is an experience-rated system and it is difficult to compare one business rate to another business. An employer's rate can fluctuate from 0.1% to 5.6%, based on if they have or haven't had layoffs.

Representative Howard

- Asked what is the percentage of our grant based upon what we send up? Mr. Brinn answered that North Carolina is a "donor state" and that the state has never received back as much as North Carolina employers have paid into the federal government. Approximately 40% to 60% of the Federal Unemployment Tax Act (FUTA) that goes to the Feds comes back to North Carolina to run our program. The rest gets absorbed to wherever the federal government decides.

- Representative Howard followed up, asking how many North Carolina employers have a positive or a negative balance? Mr. Brinn responded that they will have some firm numbers real soon. Last year there were about 30,000 employers in a negative position. Out of those 30,000, approximately 12,000 employers were at the highest rate.

## V. Partnership between Government Data Analytics Center (GDAC) and DES

Senator Rucho introduced John Correllus, Director, GDAC, Department of Information Technology, Department of Administration, to speak on the Partnership between GDAC and DES. Mr. Correllus's presentation is available on the committee website

(<http://www.ncleg.net/documentsites/committees/BCCI-6596/2015-16%20Session/Meeting%20Documents/10-5-16/UI%20Oversight%2020161005.pdf>).

Following Mr. Correllus's presentation, Senator Rucho opened the floor to questions.

Senator Clark

· Asked for an explanation of GDAC's solution to the Unemployment Tax Compliance?

Mr. Correllus explained that they are taking data from multiple agencies to see if employers are misclassifying employees as consultants in order to pay less tax. Mr. Correllus referred to Mrs. Carol Burroughs, Assistant Director, GDAC, Department of Information Technology, for additional comments. Mrs. Burroughs stated that, in addressing misclassification of employees and the underground economy, they are using multiple data sets, across the state, to identify where there are patterns of variances and how individual businesses are reporting their employees and their work efforts. Result sets will be released this month, and they will continue to refine alerts to ensure they are not going after employers who are doing legitimate business but looking at those that are trying to skirt around the system.

There being no further business, the meeting adjourned at 10:59 AM. The next meeting will be held on November 22, 2016 at 9:30 AM in room 544 LOB.

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Senator Bob Rucho

Presiding

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Billy Fritscher

Committee Clerk